

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MDL Docket No. 1629
Master File No. 04-10981

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IN RE: NEURONTIN MARKETING *
SALES PRACTICES AND *
PRODUCTS LIABILITY LITIGATION *

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THIS DOCUMENT RELATES TO: *

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Shearer v. Pfizer Inc, 1:07-cv-11428-WGY *

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TRANSCRIPT OF THE EVIDENCE
(Volume 3)

BEFORE: The Honorable William G. Young,
District Judge, and a Jury

APPEARANCES:

FINKELSTEIN & PARTNERS, LLP (By Ronald
Rosenkranz, Esq., Kenneth B. Fromson, and Keith L.
Altman, Esq.), 1279 Route 300, P.O. Box 1111,
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- and -

JACK W. LONDON and ASSOCIATES, P.C. (By
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- and -

THE LANIER LAW FIRM PLLC (By Kenneth S.
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77069, on behalf of the Plaintiffs

1 Courthouse Way
Boston, Massachusetts

April 1, 2010

1 You also understand that for a doctor on his own,
2 in the exercise of his independent medical judgment to use a
3 drug for an off-label use, is not only legal, it may be very
4 good medicine. Do you understand that?

5 THE WITNESS: Yes, I do.

6 THE COURT: So, we've heard statistics here, and
7 evidently you're privy to them, of the percentage of
8 Neurontin sales that were prescribed by doctors for
9 off-label uses. Have you? Or is that part of your
10 calculation?

11 THE WITNESS: Yes, it is.

12 THE COURT: Well, now, now to my question. How can
13 you tell how much of that percentage is as a result of
14 illegal marketing rather than legal doctor prescription, if
15 you can.

16 THE WITNESS: I think the easiest way to do that is
17 to look at -- we have, we have information on the sales over
18 time of the drug for various indications. And what the
19 judge says is correct, that a doctor is entitled to
20 prescribe an approved drug for an unapproved use in the
21 exercise of his best clinical judgment. And what we, what I
22 did was, I looked at what do sales look like of a drug for a
23 particular indication, say bipolar, for instance, which is
24 an off-label use, before the company started marketing for,
25 started marketing for the unapproved uses of the drug. And

1 what you find is that the sales at that point are quite low.
2 They're consistent with what we know from other evidence.
3 There's an academic study out there that says on average for
4 a drug you would expect typically 15 to 20 percent of the
5 uses of the drug might be for unapproved or off-label uses.
6 And when you look at the Neurontin sales prior to when the
7 defendants started promoting for off-label uses, you find
8 that roughly 15 percent of the sales in some of these
9 off-label uses occurs. So, that to my mind gave me an
10 indication of what you would expect in the ordinary course
11 of events; what you would expect for doctors who, let's just
12 say hypothetically there was no illegal promotion up to a
13 certain point, what would you expect to see in terms of
14 off-label usage. And we do see low levels of off-label
15 prescriptions. So let's just assume that all of those are
16 legitimate and that there's nothing wrong with it.

17 Then what happens is a company starts marketing
18 off-label. And then if you look at the sales graphs, what
19 happened is there's a very dramatic increase in the
20 off-label uses, which I attribute to the effects of the
21 off-label marketing.

22 So that's -- I have sort of a before and after
23 study, before there's illegal promotion and after there's
24 illegal promotion, that gives me a sense of what's the
25 magnitude, how big is the effect of the off-label marketing.

1 And it's quite substantial. It goes from 15 percent in 1994
2 when Neurontin is first introduced, roughly 15 percent of
3 the uses are for off-label, unapproved uses of the drug. So
4 let's just assume that all of those are fine and all of
5 those are perfectly legal.

6 By 2002 what do you see? You see that 94 percent
7 of Neurontin's uses are for off-label and unapproved uses.
8 So, as a crude measure of what's the effect of the off-label
9 marketing, it would be the difference between the 15 percent
10 and the 94 percent.

11 Q Dr. King, did you prepare a graph that shows Neurontin
12 sales by indication, a bar graph, on-label and off-label
13 during the years between 1995 and 2002?

14 A Yes, I did.

15 MR. LONDON: I would ask the technician to queue
16 that up for the Court and counsel.

17 MR. OHLEMAYER: Your Honor, I --

18 THE COURT: Wait a minute. You object to this?

19 MR. OHLEMAYER: I object on foundation.

20 THE COURT: Wait. All right. Take it down, come
21 to the side bar.

22 SIDEBAR CONFERENCE, AS FOLLOWS:

23 THE COURT: Where's his report? He's an expert. I
24 normally get a copy of the report because that's my anchor.
25 Have you got a copy of the report for me?

1 THE COURT: I normally go to lunch.

2 MR. OHLEMAYER: Okay. That's fine.

3 THE COURT: Do you want to argue this afternoon?

4 MR. OHLEMAYER: No, I just want to make, I want to
5 make a contemporaneous objection. I can make it in the
6 morning to make a record. I just don't want there to be an
7 issue of me not making it contemporaneously.

8 THE COURT: And what is it?

9 MR. OHLEMAYER: I would like, based on, based on
10 the cross-examination of Professor King, I would like to
11 move to strike under Rule 702 because his testimony doesn't
12 assist the trier of fact in understanding the facts at
13 issue.

14 THE COURT: Noted. Overruled. Thank you.

15 We'll recess.

16 THE CLERK: All rise. Court is in recess.

17 (Adjournment.)

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